United Nations A/56/908–S/2002/414

General Assembly
Security Council

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12 April 2002
English
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General Assembly
Fifty-sixth session
Agenda item 42
The situation in the Middle East

Security Council
Fifty-seventh year

Letter dated 12 April 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Lebanon to the United Nations addressed to the Secretary-General

On instructions from my Government, I have the honour to transmit to you herewith a statistical table showing the number of Israeli violation committed during the month of March 2002 (see annex) and to provide information on Israeli acts of aggression and violations of Lebanon's airspace and territorial waters between 30 March and 5 April 2002.

Aerial violations

Between 1313 and 1400 hours on 30 March 2002 two Israeli warplanes overflew Hasbayya district and circled over the towns of Hasbayya and Dayr Mimas, thus violating Lebanese airspace.

Between 1848 and 2030 hours on 3 April 2002 two Israeli warplanes overflew the Shab'a farmlands and circled over them, thus violating Lebanese airspace.

Between 1938 and 2130 hours on 3 April 2002 an Israeli reconnaissance aircraft flew over the sea off Damur and circled between Damur and Beirut, thus violating Lebanese airspace.

Between 2108 and 2135 hours on 3 April 2002 four Israeli aircraft overflew the Shab'a and Kafr Shuba areas. Between 2200 and 2312 hours a reconnaissance aircraft overflew the Yarun area heading for Rumaysh, thus violating Lebanese airspace.

Between 0350 and 0505 hours on 4 April 2002 an Israeli reconnaissance aircraft flew over the sea west of Naqurah at a distance of 3 nautical miles offshore, thus violating Lebanese airspace.

Between 1003 and 1027 hours on 5 April 2002 two Israeli warplanes flew over the sea off Shikka heading for Beirut and circled between Beirut and Shikka, thus violating Lebanese airspace.

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Between 1200 and 1310 hours on 5 April 2002 two Israeli warplanes flew over the sea off Tyre heading for the South and circled over parts of the South as far as the Damur area, thus violating Lebanese airspace.

Between 1408 and 1435 hours on 5 April 2002 three Israeli warplanes flew over Naqurah heading north for Beirut and circled over parts of the Shuf and the South, thus violating Lebanese airspace.

Between 1500 and 1530 hours on 5 April 2002 two Israeli warplanes flew over Alma al-Sha`b heading north for Beirut and circled between Beirut and the South, thus violating Lebanese airspace.

Between 1900 and 2025 hours on 5 April 2002 two Israeli warplanes flew over the Kafr Killa area and circled over Kafr Killa, Dayr Mimas and Kafr Shuba, thus violating Lebanese airspace.

Attacks and ground and air bombardment

Between 1230 and 1340 hours on 30 March 2002 Israeli enemy forces fired 126 artillery shells towards the Salamiyah and Ibl al-Qamh area and hostile warplanes fired 10 missiles in the Kafr Shuba and Sawwanah hill areas. Two women were lightly wounded.

Between 2145 and 2358 hours on 31 March 2002 Israeli enemy forces fired some 1,000 light-weapons rounds and 12 tank shells. A helicopter belonging to the same forces fired a missile at an area in the Ayta al-Sha`b vicinity.

Between 1640 and 1730 hours on 2 April 2002 Israeli enemy forces fired some 450 light-weapons rounds and 66 mortar rounds and 155-mm artillery shells from their positions towards an area north-east of Kafr Shuba and Hilta.

These Israeli attacks and violations, which targeted Lebanon's territory and its airspace and territorial waters, confirm that Israel is continuing its provocations and outrages against Lebanon. They are in flagrant violation of Security Council resolution 425 (1978) and of Lebanon's sovereignty, and they may pose a threat to security and stability in the region.

I should be grateful if you would have this letter circulated as a document of the General Assembly, under agenda item 42, and of the Security Council.

(*Signed*) Houssam Asaad **Diab**
Chargé d'affaires a.i.

Annex

Summary of information on Israeli violations during the month of March 2002

In the air				*At sea*	*On the ground*				*Remarks*
					Military attacks	*Field violations*	*Infringements*	*Total*	
Jet fighters	Reconnaissance aircraft	Helicopters	Total	Violations of territorial waters and launching of flares	Air raids and bombardment of military positions and important centres	Artillery bombardments, shooting and placement of installations inside Lebanese territory	Threats and drawing of weapons, earthmoving and placement of concertina wire inside Lebanese territory		
12	12	2	26	2	2	1	-	31	Total violations in previous month: 31
									Table does not include violations in the occupied Shab`a farmlands and the Kafr Shuba hills area, a zone of military operations

A/56/908
S/2002/414

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Security Council

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Fifty-sixth session
Agenda item 166
Measures to eliminate international terrorism

Security Council
Fifty-seventh year

Letter dated 12 April 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Israel to the United Nations addressed to the Secretary-General

I wish to draw your attention to the latest attack in the ongoing campaign of Palestinian terrorism directed against the citizens of Israel.

This afternoon, a Palestinian suicide bomber detonated powerful explosive charges at a crowded bus stop near the bustling Jerusalem market of Mahane Yehuda. The blast occurred at an hour when the market was overflowing with people purchasing groceries in anticipation of the start of the Jewish Sabbath. At present, six people are reported killed in the attack and over 60 others are wounded. The Al Aksa Brigades, the terrorist wing of Palestinian Authority Chairman Yasser Arafat's Fatah faction, claimed responsibility for the bombing.

Earlier today, a Palestinian terrorist killed an Israeli and a Palestinian, and wounded four other Israelis and three other Palestinians, in a shooting spree at the Erez crossing point at the northern end of the Gaza Strip. The gunman, who was reported to have posed as a worker at the terminal, opened fire with an assault rifle he hid under his coat, and hurled at least one fragmentation grenade at Israelis and Palestinians in the vicinity, shortly before 7 a.m. (local time). Islamic Jihad took responsibility for the attack.

This attack is the latest incident in the continuing campaign of Palestinian terrorism that has been detailed in letters dated 26 March 2002, 18 March 2002 (A/56/880-S/2002/293), 14 March 2002 (A/56/876-S/2002/280), 11 March 2002 (A/56/867-S/2002/257), 8 March 2002 (A/56/864-S/2002/252), 5 March 2002 (A/56/857-S/2002/233), 4 March 2002 (A/56/854-S/2002/222), 27 February 2002 (A/56/843-S/2002/208), 20 February 2002 (A/56/828-S/2002/185), 19 February 2002 (A/56/824-S/2002/174), 11 February 2002 (A/56/819-S/2002/164), 8 February 2002 (A/56/814-S/2002/155), 28 January 2002 (A/56/798-S/2002/126), 22 January 2002 (A/56/788-S/2002/104), 18 January 2002 (A/56/781-S/2002/86), 16 January 2002 (A/56/774-S/2002/73), 11 January 2002 (A/56/771-S/2002/47), 4 January 2002 (A/56/766-S/2002/25), 13 December 2001 (A/56/706-S/2001/1198), 4 December 2001 (A/56/678-S/2001/1150), 30 November 2001 (A/56/670-S/2001/1141), 27 November

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2001 (A/56/663-S/2001/1121), 12 November 2001 (A/56/617-S/2001/1071), 5 November 2001 (A/56/604-S/2001/1048), 24 October 2001 (A/56/506-S/2001/1011), 19 October 2001 (A/56/492-S/2001/990), 17 October 2001 (A/56/483-S/2001/975), 8 October 2001 (A/56/450-S/2001/948), 5 October 2001 (A/56/444-S/2001/943), 3 October 2001 (A/56/438-S/2001/938), 24 September 2001 (A/56/406-S/2001/907), 20 September 2001 (A/56/386-S/2001/892), 17 September 2001 (A/56/367-S/2001/875), 7 September 2001 (A/56/346-S/2001/858), 4 September 2001 (A/56/331-S/2001/840), 30 August 2001 (A/56/325-S/2001/834), 27 August 2001 (A/56/324-S/2001/825), 13 August 2001 (A/56/294-S/2001/787), 9 August 2001 (A/56/286-S/2001/780), 8 August 2001 (A/56/280-S/2001/775), 6 August 2001 (A/56/272-S/2001/768), 27 July 2001 (A/56/225-S/2001/743), 26 July 2001 (A/56/223-S/2001/737), 17 July 2001 (A/56/201-S/2001/706), 13 July 2001 (A/56/184-S/2001/696), 3 July 2001 (A/56/138-S/2001/662), 2 July 2001 (A/56/131-S/2001/656), 21 June 2001 (A/56/119-S/2001/619), 19 June 2001 (A/56/98-S/2001/611), 18 June 2001 (A/56/97-S/2001/604), 13 June 2001 (A/56/92-S/2001/585), 11 June 2001 (A/56/91-S/2001/580), 4 June 2001 (A/56/85-S/2001/555), 30 May 2001 (A/56/81-S/2001/540), 25 May 2001 (A/56/80-S/2001/524), 18 May 2001 (A/56/78-S/2001/506), 11 May 2001 (A/56/72-S/2001/473), 9 May 2001 (A/56/69-S/2001/459), 1 May 2001 (A/55/924-S/2001/435), 23 April 2001 (A/55/910-S/2001/396), 16 April 2001 (A/55/901-S/2001/364), 28 March 2001 (A/55/863-S/2001/291), 27 March 2001 (A/55/860-S/2001/280), 26 March 2001 (A/55/858-S/2001/278), 19 March 2001 (A/55/842-S/2001/244), 5 March 2001 (A/55/821-S/2001/193), 2 March 2001 (A/55/819-S/2001/187), 14 February 2001 (A/55/787-S/2001/137), 13 February 2001 (A/55/781-S/2001/132), 2 February 2001 (A/55/762-S/2001/103), 25 January 2001 (A/55/748-S/2001/81), 23 January 2001 (A/55/742-S/2001/71), 28 December 2000 (A/55/719-S/2000/1252), 22 November 2000 (A/55/641-S/2000/1114), 20 November 2000, (A/55/634-S/2000/1108) and 2 November 2000 (A/55/540-S/2000/1065).

Today's bombing comes just hours after the United States Secretary of State arrived in Israel in an attempt to assist the parties to implement a meaningful ceasefire, an initiative with which Israel has pledged to fully cooperate. In this regard, today's attack follows a familiar pattern whereby an American initiative to bring about a ceasefire is embraced by Israel but met with a surge in terrorist bombings by the Palestinians. American envoy General Anthony Zinni, whose bridging proposals have been accepted by Israel but rejected repeatedly by the Palestinian side, was similarly greeted with a spate of suicide attacks when he first arrived in the region in December.

Today's attack further underscores the necessity to implement all aspects of resolution 1402 (2002) together, including a meaningful ceasefire, bolstered by genuine steps on the part of the Palestinians to end terrorism and incitement and to cooperate with General Zinni in the implementation of the Tenet plan and the Mitchell report. In the absence of a full and faithful implementation of resolution 1402 (2002), including all the necessary steps required of both sides, we will be unable to create the proper conditions under which the parties can return to a political process as called for by the Security Council.

And yet, despite clear calls from the international community to end the terrorism and the violence, Palestinian terrorists have continued to attempt attacks on Israeli civilians, with the full support of the Palestinian leadership. The only actor in the region actually working to prevent future terrorist attacks is the Israeli

security forces, which have been instrumental in protecting civilian lives and preventing the number of casualties from rising even higher. In recent days, numerous attempted attacks have been thwarted by Israeli forces, demonstrating that Israel's counter-terrorism operations are the only factor preventing future acts of terrorism.

Israel holds the Palestinian leadership fully responsible for today's attack in the light of its documented support for terrorism, its continuing attempts to use the media to incite hatred and glorify suicide, and its total refusal even to condemn terrorist attacks on Israeli civilians. While members of the international community have condemned terrorism in the strongest terms, Chairman Arafat continues to speak of "martyrdom" from his Ramallah compound, where he is providing shelter to wanted terrorists responsible for perpetrating attacks against civilians.

Israel is exercising its right of self-defence, as any State would do in the face of a similar and unrelenting terrorist threat. This is a right recognized not only in the Charter of the United Nations but in Security Council resolutions 1368 (2001) and 1373 (2001), which refer to terrorism as a threat to peace and security. And while Israel exercises its right and duty to protect its citizens, it has not forgotten its obligations to protect the lives of innocent Palestinian civilians.

Israel reiterates its call on the international community to condemn Palestinian terrorism in strongest terms and to impress upon the Palestinian people and leadership that terrorism has no place in the civilized world and that the employment of such heinous tactics will not be permitted to advance the Palestinian cause.

I should be grateful if you would arrange to have the text of this letter circulated as a document of the General Assembly, under agenda item 166, and of the Security Council.

(*Signed*) Aaron **Jacob**
Chargé d'affaires a.i.

United Nations S/2002/416

Security Council

Distr.: General
12 April 2002
English
Original: Spanish

Letter dated 12 April 2002 from the Chargé d'affaires a.i. of the Permanent Mission of Cuba to the United Nations addressed to the President of the Security Council

I am following instructions to convey to you the profound concern of the Government of the Republic of Cuba at the serious events occurring in the Republic of Venezuela.

The Government of Cuba expresses its strongest condemnation of the coup d'état which has deposed President Hugo Chávez, who was democratically elected by the Venezuelan people, during the constitutional exercise of his term of office with full international recognition.

President Chávez has been deposed through the illegal use of force, detained and held incommunicado, in a blatant violation of the Constitution of Venezuela, the norms of the rule of law and international and regional instruments and mechanisms.

The Cuban Government has learned with deep concern of the public statement by Dr. Isaías Rodríguez, Procurator-General of Venezuela, who categorically affirms that President Chávez has not resigned from his high office nor signed any document to that effect; nor has the Vice-President, who is to succeed him under the Constitution, been dismissed by the President. The Procurator-General has also affirmed that only the National Assembly of Venezuela is empowered to accept the resignation of the President of the Republic; it is even incumbent on the President of the Assembly to be third in line to succeed the President, as provided in the Venezuelan Constitution.

The Procurator-General has also denounced the arbitrary, illegal and unconstitutional nature of the coup d'état, which has cut off communication between the Assembly and President Chávez, the Constitutional President, whom the Procurator-General's Office regards as the sole legitimate leader of the country.

The daughter of President Chávez has issued a dramatic appeal to the international community, having been able to speak by telephone with the President, and has indicated that the constitutional President has not resigned and that he is being held incommunicado by force.

For their part, a number of governors and military leaders have denounced the coup d'état.

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In the meantime, the persons overthrowing the Government are involved in a dirty manipulation of information with the aim of preventing the international community and the Venezuelan people themselves from mobilizing.

The Government of Cuba calls for the broadest possible international mobilization and urgent and firm action by the United Nations to demand respect for the physical integrity of President Chávez and to ensure the restoration of constitutional order and the rule of law in Venezuela.

The Government of Cuba wishes to inform the United Nations, the international community and public opinion that the Cuban Embassy in Caracas is under violent siege, with the consent of those mounting the coup, by a mob which includes persons of Cuban origin residing in Venezuela, who are representatives of the extreme right wing and are in close contact with the terrorist organization known as the Cuban American National Foundation, located in Miami.

Cuban diplomatic personnel in Venezuela have instructions, and the strongest commitment, to defend the integrity of the Cuban Embassy in Caracas and to prevent the agitators from entering it, as provided in the conventions on diplomatic relations and other binding international instruments, even at the cost of their own lives.

The Government of Cuba holds those staging the coup and usurping the constitutional power of Venezuela responsible for what may occur in the Cuban Embassy and for the physical integrity and security of the Cuban diplomats.

I should be grateful if you would have the present letter circulated urgently as a document of the Security Council.

(*Signed*) Orlando **Regueijo Gual**
Ambassador
Chargé d'affaires a.i.

United Nations S/2002/417

Security Council

Distr.: General
15 April 2002

Original: English

Letter dated 10 April 2002 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General

Upon instructions from my Government and with reference to your summary statement on matters of which the Security Council is seized and on the stage reached in their consideration (S/2002/30), I would like to request the retention on the list of matters of which the Council is seized of the item listed in paragraph 10 of the summary statement entitled "The situation between Iran and Iraq".

I should be grateful if you would have this letter circulated as a document of the Security Council.

(*Signed*) Hadi **Nejad-Hosseinian**
Ambassador
Permanent Representative

02-33177 (E) 150402

United Nations A/56/914–S/2002/418

General Assembly
Security Council

Distr.: General
16 April 2002

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General Assembly
Fifty-sixth session
Agenda item 62
Question of Cyprus

Security Council
Fifty-seventh year

Letter dated 12 April 2002 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

Further to my letter of 9 October 2001 (A/56/451-S/2001/953) concerning the unilateral application of the Greek Cypriot administration to join the European Union, I have the honour to transmit herewith a note written by Professor M. Mendelson Q.C., prepared in response to the opinion circulated by the Greek Cypriot side on the same matter (A/56/723-S/2001/1222).

I should be grateful if the text of the present letter and its annex would be circulated as a document of the General Assembly, under agenda item 62, and of the Security Council.

(*Signed*) Ümit **Pamir**
Ambassador
Permanent Representative

02-33504 (E) 220402

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Annex to the letter dated 12 April 2002 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

Note by Professor M. H. Mendelson Q.C. on the application of the Republic of Cyprus to join the European Union

1. In June 1997 I wrote an Opinion, at the request of the Government of Turkey, on the application by the Greek Cypriot authorities in Cyprus to join the European Union.[1] I came to the conclusion that membership would be contrary to the international obligations of Cyprus and that it would be contrary to the treaty obligations of Greece and the United Kingdom to assist in the acquisition of such membership. In July of the same year I wrote a Supplementary Opinion refuting the argument, which had been raised in some quarters, that the admission of Austria to the European Union was a precedent to the contrary. In October of the same year the Greek Cypriot Government caused to be circulated a Joint Opinion by Professors James Crawford, Gerhard Hafner and Alain Pellet, which *inter alia* sought to contest my views and came to the contrary conclusion.[2] In 2001 I was asked for my reactions to the Joint Opinion. I wrote a Further Opinion dated 12 September 2001, and this was circulated, as UN doc. A/56/451 and S/2001/953 at the request to the Permanent Representative of Turkey to the UN on 9 October 2001. My first two opinions were annexed to my Further Opinion.

2. On 17 November 2001 the same three professors wrote a further Joint Opinion, which was circulated as UN doc. A/556/723 – S/2001/1222. I have been asked to comment on this.

3. There is are no virtually new points in the Further Joint Opinion which I have not already answered in my previous Opinions; and there consequently seems little point in prolonging this war of words. In particular, it would seem to be excessive to require the reader to read the same arguments all over again. Accordingly, I simply wish to make a few brief points.

4. I said in my Further Opinion (paragraph 3) that, although the Joint Opinion was *in substance* a reply to my Opinion, in style it purported to be a general study. I observed that a consequence of this technique was that it "enables some of my arguments to be misdescribed, minimized or omitted. Secondly, it enables the authors to set up 'straw men' – hypothetical arguments against their position not made by me – which they can easily demolish". Exactly the same techniques have been used in the Further Joint Opinion.

5. Paragraph 4 of the Further Joint Opinion contains a serious and misleading elision. It begins by quoting in part some of the key provisions the Treaty of Guarantee. Specifically, the undertaking by Cyprus, in Article I(2), "not to participate, in whole *or in part*, in any *political or economic union* with any State whatsoever [misquoted in the Opinion as 'whatever' – a weaker term][3] or partition of the Island"; and the undertaking, by the Guarantors, Greece, Turkey and the United Kingdom, in Article

[1] Circulated, at the request of the Permanent Representative of Turkey to the UN, on 25 July 1997 as UN document A/51/951-S/1997/585.
[2] 17 October 1997. UN doc. A/52/481-S/1997/805.
[3] In French "quelque Etat ce que soit".

II(2) to prohibit, "so far as concerns them, *any* activity *aimed at* promoting, directly *or indirectly*, either union of Cyprus with any other State or partition of the island". (The italics are mine.) But the Opinion then goes on to say that "The question is whether the accession of Cyprus to the EU would involve 'union of Cyprus with any other State'". That is by no means the only question, or necessarily even the key one. For under the Treaty of Guarantee it is not just "union of Cyprus with any other State" which is ruled out, but *any* activity *aimed* at *promoting*, directly *or indirectly*, political *or economic* union, with any State whatsoever. This is a considerably lower threshold. It would be enough to show that membership in the EU would contribute even *indirectly and partly*, merely to a *degree* of economic union with Greece and/or other States. And even if we were to confine this to Greece alone, I fail to see how any impartial observer could possibly fail to see that the membership of Cyprus in the EU would contribute, at the very least, to *some measure* of closer economic union (at least) with Greece. Given the geographical proximity of the two countries, the close economic links which already exist between them – but which will necessarily be strengthened by membership – and the close ties of language and culture between the majority population of Cyprus and that of Greece, it seems inconceivable that this should not be so. This also seems to be the view of numerous Greek and Greek Cypriot politicians, who have stated with some satisfaction that the membership of Cyprus in the EU will help to bring about *enosis*. Thus, the threshold specified in the Treaty itself seems an insuperable barrier to Cypriot accession to the EU. And incidentally, for the three Professors to suggest that co-membership of other States will *water* down the existing ties between the two countries seems wholly unrealistic.

6. If I am correct in the above reasoning, there is no need, logically, to go any further, because my argument is already proven. But as a matter of fact I think one can go further, *ratione materiae* and *personae*, so to speak.

7. *Ratione materiae* because the EU is, at the very least, an economic union. Its former name, the "European Economic Community" made that clear enough, and now it has gone much further towards full economic, and a large measure of political, union. Although the name "European Union" is very apt in this particular case, but it is the *substance* of EU law which compels this conclusion. The EU would not need to be a full federal or unitary State to fall within the language of the Treaty of Guarantee, which prohibits participation in *any* union, political *or economic* (whole or partial), or steps towards it.

8. The Further Joint Opinion's attempts to circumvent this obvious fact, by asserting that economic associations were not covered by this prohibition, are unconvincing. It is true that, during the conversations which preceded the conclusion of the Treaty of Guarantee, the possibility of Cyprus joining associations like the European Coal and Steel Community or the European Free Trade Area was not ruled out. But, apart from the fact that the language of the Treaty of Guarantee as ultimately agreed is sufficiently clear,[4] there are two other answers to the point. First, like the UN, the bodies named were far looser associations than the EU. (Nor, indeed, were they organizations to which *either* Greece or Turkey belonged, so there was less of a

[4] And, indeed, paragraph 20 of my Further Opinion gives a fairer and more nuanced version of the drafting history than does the Further Joint Opinon.

threat of union by the back door.) Secondly, the constitutional arrangements which are themselves guaranteed by the Treaty include Article 50 of the Constitution of Cyprus, which clearly gave the leaders of each of the two ethnic groups a veto over membership of international organizations, including economic ones, unless both Greece *and* Turkey were members, which is not the case here.

9. The Further Joint Opinion's attempt to circumvent this by pointing out that there is a separate set of Final Provisions which *inter alia* reproduce parts of the Treaty of Guarantee is wholly unconvincing evidence that economic organizations are an exception: the provisions are complementary. And the attempt to bolster this weak argument by reference to Article 169 of the Constitution is spurious, as I had previously pointed out. First, the article is not concerned with membership *of* international organizations, but treaties *with* them, as well as treaties with other States on relatively minor or technical matters, namely "commercial matters, economic cooperation (including payments and credit) and *modus vivendi*", where parliamentary approval could be dispensed with. Membership of the EU certainly does not fall into that category. And secondly, Article 169 is *expressly* made subject to Art. 50, the relevant part of which (unlike Art. 169) is, furthermore, one of the "Basic" (unamendable) provisions of the Constitution.

10. The Further Joint Opinion is equally unconvincing *ratione personae*. *First*, as an example of their technique of putting words into my mouth, or of putting up a "straw man" which they can easily knock down, the authors tells us that the EU is not a State. I have made it entirely clear previously that that is not my position. My argument is that the EU is a *union of* States, which seems to me to be undeniable, both in terms of ordinary language and in terms of law. Not, perhaps, a full political union; but it is not just full political union that the Treaty prohibits. *Secondly*, they argue that "*any State whatsoever*" can only mean one single State (either Greece or Turkey), and not more than one. For reasons already explained in my previous Opinions, I dispute that this is the "ordinary" or necessary meaning of the language. Furthermore, whilst I myself pointed out that, whether a singular includes the plural depends on the context, (a) "whatsoever" militates against its just being Greece or Turkey; and (b), the context does not compel the interpretation advanced by the three Professors. Even if *enosis* with Greece was what was *primarily* envisaged, I have already pointed out that if Cyprus had sought union with, say, Malta, or indeed with the UK, it is by no means evident that the other Guarantors would have lacked the right to object. This would have been union with "any State *whatsoever*", and there might also have been policy reasons why this should be held to constitute a violation of the Treaty. And secondly, I have already suggested that if Cyprus had sought to join a union with both Greece and Malta, say, the other Guarantors would have been entitled to claim that this was a breach of the Treaty of Guarantee – again on both terminological and policy grounds. Thirdly, to enter the EU is to enter into an economic (and to some extent a political) union with other States, both severally and jointly: in other words, Cyprus would be entering into union both with another State (whatsoever) and with other States.

11. Paragraph 7(c) of the Further Joint Opinion takes my argument out of context. My reliance on Art. 50 of the Constitution was in order to help demonstrate that there is no foundation to the three Professors' argument that international economic organizations were outside the scope of the prohibition of union in the Treaty of

Guarantee. If it had been intended that they should not be covered, then Article 50, which is very detailed, would have made an exception for such bodies. Furthermore, there is a close link between the Constitution and the Treaty of Guarantee, as the authors themselves admit elsewhere (e.g. in paragraph 7(d) *in fine* and paragraph 11).

12. Paragraph 10 of the Further Opinion makes the point (virtually the only new one) that, in the absence of a Turkish Cypriot Vice-President, his veto cannot be cast and so the decision to accede is consequently valid and effective. This argument seems to ignore Article 52, which requires promulgation of any law or decision to take place within 15 days of *transmission to the respective offices* of the President *and* Vice-President. Presumably, there has been no transmission, so the condition precedent to publication has not been fulfilled. Moreover, it would certainly be contrary to the spirit, object and purpose of the provisions about the two communities' veto to say that, if one leader is prevented from exercising his veto, the whole arrangement can be treated as if had never existed.

13. Paragraph 7(d) is an egregious example of putting words into my mouth. Nowhere have I argued that, if Cyprus were to join the EU, "Greece or the UK would exercise authority in Cyprus as part of the EU". Indeed, I went out of my way in paragraph 24 of my Further Opinion to refute a previous attempt to set up and then knock down this "straw man". It is not (or, more precisely, not only) the exercise of authority over Cyprus by any other State which is prohibited by the Treaty of Guarantee, but union, economic or political, partial or total (or steps conducing thereto) - something much broader. The three Professors' definition of union is, with respect, a most peculiar one.

14. Paragraph 8 of the Further Joint Opinion further traduces my Opinion, by putting into my mouth more words I did not utter. My main point about the so-called Austrian "precedent" was not that the interested States clearly chose to waive a breach of Article 4 of the Austrian State Treaty in agreeing to Austria's membership in the UN. If matters had indeed been so clear-cut, I would have cited this case as a precedent *in favour* of my view. Instead, what I reported was the fact that there had been questions about the compatibility of membership with Austria's obligations under the State Treaty[5] but that in the end all parties agreed that Austria could join. In my view, given that the parties were capable of waiving any possible breach by Austria, this makes the example neutral: neither in favour of my argument nor against it.[6]

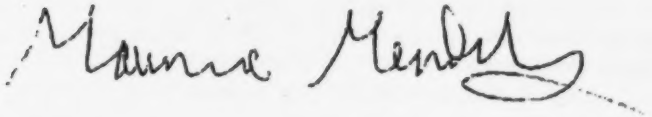
15. Incidentally, and *à propos* an earlier, similar problem with Austria, the Further Joint Opinion fails to deal with the point I made in paragraph 27 of my Further Opinion, which cites judicial support for my argument.

16. Paragraph 12 of the Further Joint Opinion begs the question whether the obligation embodied in Article 170 of the Cyprus Constitution - and also, as I previously pointed out, in Part II of Annex F of the Treaty of Establishment of 1960 - is a

[5] See e.g. footnote 32 of my Further Opinion.
[6] Incidentally, I also mentioned other possible bases for distinguishing the case of Austria from that of Cyprus.

"*general* MFN obligation of the entrant". And I repeat yet again: I am not arguing that Turkey has a current vested right to MFN treatment: just that it will not be possible, if Cyprus joins the EU, to conclude the anticipated treaty with Turkey to ensure that it obtains MFN treatment, and in any case treatment no less favourable than the UK and Greece.

17. I therefore see no reason to resile from the opinion which I previously expressed.



Maurice Mendelson, QC

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London, EC4Y 9BW.

26 March 2002